1383.

SUPREME COURT OF THE UNITED STATES.

No. 213.

CORNELIUS W. LAWRENCE, PLAINTIFF IN ERROR,

vs.

GILBERT ALLEN AND SAMUEL C. PAXTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the [L. S.] circuit court of the United States, for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Gilbert Allen and Samuel C. Paxson, plaintiffs, and Cornelius W. Lawrence, defendant, a manifest error hath happened, to the great damage of the said Cornelius W. Lawrence, as is said, and as appears by his complaint; we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this first day of December, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the United States the seventy-third.

ALEX'R GARDINER,
Clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit.

B. F. BUTLER, *Plaintiffs' attorney.*

The answer of the judges of the circuit court of the United States, for [L. S.] the southern district of New York, in the second circuit, in the within writ mentioned.

The record and proceedings, whereof mention is within made, with all things concerning the same, are hereby respectfully certified to the justices of the Supreme Court of the United States within mentioned, in a certain schedule to this writ annexed, as within it is commanded.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this fourth day of December, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the United States the seventy-third.

ALEX'R GARDINER,
Clerk of the U. S. circuit court for the so. district of New York.

By the honorable Samuel R. Betts, one of the judges of the circuit court of the United States, for the southern district of New York, in the second circuit, to Gilbert Allen and Samuel C. Paxson.

Whereas Cornelius W. Lawrence lately issued out of the Supreme Court of the United States a writ of error, directed to the judge of the circuit court of the United States, for the southern district of New York, in the second circuit, stating that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court, before the judge thereof, between Gilbert Allen and Samuel C. Paxson, plaintiffs, and Cornelius W. Lawrence, defendant, a manifest error hath happened, to the great damage of the said Cornelius W. Lawrence; and whereas, for the correction of that error in due manner, the said writ has been issued, returnable at the next stated Supreme Court of the United States, to be held in the Capitol, at the city of Washington, on the first Tuesday of December, 1848:

You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the said first Monday of December, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the first day of December, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the United States the seventy-third.

SAM'L R. BETTS.

Due service of the within citation admitted. New York, December 16, 1848. S. SANXAY, *Attorney for Plaintiffs.*

UNITED STATES OF AMERICA, *Southern district of New York, ss:*

I, Alexander Gardiner, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals, on file, and remaining of record in my office. [L. S.]

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this eighteenth day of December, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the said United States the seventy-third.

ALEX'R GARDINER, *Cl'k.*

Circuit court of the United States, for the southern district of New York, second circuit.

Pleas in the circuit court of the United States, for the southern district of New York, in the second circuit, before the judges thereof, of the third Monday of October, eighteen hundred and forty-five.

SOUTHERN DISTRICT OF NEW YORK,
City and county of New York, ss:

Gilbert Allen and Samuel C. Paxsen, plaintiffs, put in their place Skeffington Sanxay, their attorney, against Cornelius W. Lawrence, defendant, of a plea of trespass on the case upon promises.

1385

SOUTHERN DISTRICT OF NEW YORK,
City and county of New York, ss:

Cornelius W. Lawrence, defendant, puts in his place Benjamin F. Butler, his attorney, at the suit of Gilbert Allen and Samuel C. Paxsen, plaintiffs, of a plea of trespass on the case upon promises.

SOUTHERN DISTRICT OF NEW YORK,
City and county of New York, ss:

Be it remembered, that heretofore, to wit, on the third Monday of October, A. D. 1845, the above named plaintiffs, by Skeffington Sanxay, their attorney, come into the supreme court of judicature of the people of the State of New York, and brought their certain bill against the said defendant, in the words following, viz:

CITY AND COUNTY OF NEW YORK, *ss:*

Gilbert Allen and Samuel C. Paxsen, plaintiffs in this suit, by Skeffington Sanxay, their attorney, complain of Cornelius W. Lawrence, defendant in this suit, of a plea of trespass on the case upon promises, by filing a declaration pursuant to statute.

For that whereas the said defendant, on the thirtieth day of October, in the year one thousand eight hundred and forty-five, at the city and county aforesaid, was indebted to the said plaintiffs in the sum of sixteen thousand dollars, lawful money of the United States of America, for so much money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of the said defendant. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last above mentioned when the said defendant should be thereunto afterwards requested. And whereas, also, the said defendant, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, was indebted to the said plaintiffs in the further sum of sixteen thousand dollars, like lawful money as aforesaid, for so much money before that time paid, laid out, and expended by the said plaintiffs to and for the use of the said defendant, and at the like special instance and request of the said defendant. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last above mentioned when the said defendant should be thereunto afterwards requested. And whereas, also, the said defendant, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, was indebted to the said plaintiffs in the farther sum of sixteen thousand dollars, like lawful money as aforesaid, for money before that time had and received by the said defendant to and for the use of the said plaintiffs. And being so indebted, the said defendant, in

consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested. And whereas, also, the said defendant, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiffs of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear, and indebted to the said plaintiff in the further sum of sixteen thousand dollars, like lawful money as aforesaid. And being so found in arrear, and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendants should be thereunto afterwards requested. Nevertheless, the said defendant, (although often requested, &c.,) hath not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same, or any part thereof, to the said plaintiffs, the said defendant hath hitherto wholly refused, and still do refuse, to the damage of the said plaintiffs of sixteen thousand dollars; and thereof the said plaintiffs bring suit, &c.

And the said defendant, by Benjamin F. Butler, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs have above thereof complained against him, and of this he puts himself upon the country, and the said plaintiff likewise, &c.

And hereupon the said plaintiffs give the court here to understand and be informed, that heretofore, to wit, on the eighteenth day of November, A. D. 1845, in pursuance of process issued out of this court, the plaint levied as aforesaid, together with the whole process and proceedings thereon, were sent into this court before the judges thereof as aforesaid.

And thereupon the marshal of the southern district of New York is commanded that he cause to come before the next circuit court, appointed to be held for the southern district of New York, in the second circuit, before the judges thereof, at the City Hall in the city of New York, on the first Monday of April, 1846, twelve good and lawful men to make a jury to try the issue, so as above joined; the same day is given to the parties aforesaid, at the same place.

At which said day and place come the parties aforesaid, by their respective attorneys aforesaid; but because the issue so as aforesaid joined was not tried, process is continued by the parties aforesaid to the plea aforesaid, until the first Monday of April, A. D. 1847.

At which said day and place come the parties aforesaid, by their respect-

ive attorneys aforesaid, before the honorable Samuel Nelson, one of the associate justices of the Supreme Court of the United States, and the jury whereof mention is within made being summoned, also come, and the jurors of that jury being severally chosen, tried, and sworn, say upon their oaths, that the said defendant did undertake and promise in manner and form as the said plaintiffs have above thereof complained against him, and they assess the damages of the plaintiffs, by reason of the premises, at two thousand eight hundred and sixty-five dollars and eighty-five cents over and above the costs and charges of the said plaintiffs, and for those costs and charges to six cents.

Therefore it is considered that the said plaintiffs do recover against the said defendant the damages, costs, and charges by the jurors aforesaid in form aforesaid assessed, and also five hundred and forty dollars and forty-seven cents for the costs and charges of the said plaintiffs now here adjudged of increase to the said plaintiffs, and with their assent, which said damages, costs, and charges, including lawful interest upon the damages, costs, and charges so as aforesaid assessed by the jurors aforesaid, now here proved to this court, amount in the whole to three thousand seven hundred and twenty-five dollars and four cents; and the said defendant in mercy, &c.

Judgment signed this 16th day of December, A. D. 1848.

ALEXANDER GARDINER, *Clerk*.

$3,725,04.

Verdict,	$2,865.85
Interest,	318.72
Costs,	540.47
	$3,725.94

UNITED STATES CIRCUIT COURT, *Southern district of New York:*

CORNELIUS W. LAWRENCE
ads.
GILBERT ALLEN & SAMUEL C. PAXSON.

Bill of exceptions.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that at a circuit court of the United States for the southern district of New York, held at the City Hall, in the city of New York, in the said southern district of New York, on the twelfth day of May, in the year one thousand eight hundred and forty-seven, before the honorable Samuel Nelson, associate justice, the issue within contained, joined between the said Gilbert Allen and Samuel C. Paxson, plaintiffs, and Cornelius W. Lawrence, defendant, came on to be tried, and the said parties, by their respective attorneys, before the said judge came; and the jurors of the jury in this behalf duly summoned also came, and were then and there, in due manner, chosen and sworn to try the said issue.

And the counsel for the said plaintiffs, to maintain and prove the said

issue on his part, produced the following witnesses and evidence, that is to say:

Samuel G. Ogden, jr., who testified that he had been auditor of the custom-house in the city of New York during the last two years and more, and that he was personally acquainted, as such auditor, with the payment of the duties and other matters connected with the entry of certain goods by the plaintiffs in September, 1845, described in the entry, invoices, and protest hereinafter set forth; all which papers he verified, and which were given in evidence on the part of the plaintiffs. The material parts of said entry are as follows:

Entry of merchandise imported by Allen and Paxson in the American brig Lowell, whereof Nelson Jarvis is master, from Para.

New York, Sept. 20th, 1845.

Q		
B C ‡ 1 *a* 70	Seventy boxes, cont'g 5,546 pairs unmanufactured India rubber shoes, *a* 400 rs. - - rs. 2,218,400 Charges, (includ'g com'n 2½ p. c. - - - 428,643	rs. 2,647,043
B ‡ 1 *a* 49	Forty-nine boxes, cont'g 4,701 pairs unmanufactured India rubber shoes, *a* 400 rs. - - rs. 1,880,400 Charges, (includ'g com'n 2½ p. c. - - - 358,069	rs. 2,238,469
G & J ‡ 1 *a* 80	Eighty boxes, cont'g 7,483 pairs unmanufactured India rubber shoes, *a* 400 rs. - - rs. 2,993,200 Charges - rs. 633,602 Com'n 2½ p. c. 90,670 724,272	3,717,472
P ‡ 1 *a* 300	Three hundred cases, contain'g 32,682 pairs unmanufactured India rubber shoes, *a* 400 rs. rs. 13,072,800 Charges rs. 2,831,350 Com. 2½ p. c. 397,601 3,228,953	16,301,753

Many other articles are enumerated in this entry which are here omitted. The dutiable value of the India rubber shoes above mentioned, as stated in the entry, amounted in the aggregate to $12,452.

The invoices of the goods described in the entry, and produced by the plaintiffs, and left with the collector at the time of making the said entry, were, so far as regards the India rubber shoes mentioned in the said entry, in the words and figures following:

Invoice No. 1.

Invoice of sundry produce shipped per American brig Lowell, Nelson Jarvis, master, bound for New York, consigned to Messrs. Allen & Paxsen there, on account and risk of whom it may concern.

Q B C ‡ 1 *a* 70	70 boxes, containing 5,546 pairs unmanufactured India rubber shoes, *a* 400 - - - 2,218,400 12 p. c. export duty - 266,208 Capatazims and boreopezo 11,245 Sello - - - - 2,228 Hay, twine, and stuffing 64,200 Packing, porterage, and lighterage - - 20,200 Commission 2½ p. c. - 64,562	2,647,043
B ‡ 1 *a* 49	49 boxes, containing 4,701 pairs unmanufactured India rubber shoes, *a* 400 - - - - 1,880,400 12 p. c. export duty - 225,648 Captaizias and beropezo 9,555 Sello - - - - 1,880 Hay, twine, and stuffing 50,470 Package, porterage, and lighterage - - 15,920 Commission 2½ p. c. - 54,596	2,238,469

Q

Specification of shoes, marked B, C, ‡ 1 a 70.

‡ 1.	1 box men's figured shoes containing			61	pairs.
2.	1 "	"	"	69	"
3.	1 "	"	"	71	"
4.	1 "	"	"	70	"
5.	1 "	"	"	65	"
6.	1 "	"	"	70	"
7.	1 "	"	"	73	"
8.	1 "	"	"	72	"
9.	1 "	"	"	75	"
10.	1 "	"	"	74	"

10 boxes 700 pairs.

11.	1 box figured shoes	containing	73	pairs.
12.	1 "	"	75	"
13 *a* 18.	6 boxes same,	containing each	70–420	"
19 *a* 20.	2 "	"	73–146	"
21 *a* 22.	2 "	"	70–140	"
23.	1 "	"	71	"
24.	1 "	"	70	"
25.	1 "	"	68	"
26 *a* 27.	2 "	containing each	70–140	"
28.	1 "	"	68	"
		18 boxes	1,271	pairs.

‡ 29.	1 box men's figured shoes	containing	76	pairs.
30.	1 "	"	73	"
30 *a* 32.	2 "	containing each	70–140	"
33 *a* 34.	2 "	"	73–146	"
35.	1 "	"	69	"
36.	1 "	"	73	"
37 *a* 40.	4 "	each	70–280	"
41.	1 "	"	66	"
42.	1 "	"	68	"
43.	1 men's plain shoes	"	20	pairs.
		15 boxes	1,061	pairs.

‡ 44 *a* 45.	2 boxes men's plain shoes	each	70–140	pairs.
46.	1 ladies' figured, assorted as usual		96	"
47 *a* 61.	15 same as above, 90 pairs each		1,440	"
62.	1 ladies' figured shoes	containing	86	"
63.	1 "	"	88	"
64.	1 "	" assorted	96	"
65.	1 "	"	96	"
66.	1 "	" containing	100	"
62.	1 "	"	90	"
68.	1 "	"	90	"
69.	1 "	"	92	"
70.	1 "	"	100	"
	27 boxes	containing	2,514	pairs.
	10 "	"	200	"
	18 "	"	1,271	"
	15 "	"	1,061	"
	70 "	"	5,546	pairs.

Specification of shoes marked B ‡ 1 a 49.

B ‡ 1.	1 box	men's figured	shoes	containing	73 pairs.
2.	1 "	"	"	72	"
3.	1 "	"	"	80	"
4.	1 "	"	"	73	"
5.	1 "	"	"	66	"
6.	1 "	"	"	70	"
7.	1 "	"	"	69	"
8.	1 "	plain	"	74	"
9.	1 "	"	"	81	"
10.	1 "	"	"	71	"
			10 boxes	729	pairs.
‡ 11.	1 box	men's plain	shoes	containing	73 pairs.
12.	1	ladies' figured	"	99	"
13.	1 "	"	"	100	"
14.	1 "	"	"	100	"
15.	1 "	"	"	102	"
16.	1 "	"	"	104	"
17.	1 "	"	"	100	"
18.	1 "	"	"	95	"
19.	1 "	"	"	99	"
20.	1 "	"	"	100	"
			10 boxes	972	pairs.
21.	1 box	ladies' figured	shoes	100	pairs.
22.	1 "	"	"	100	"
23.	1 "	"	"	103	"
24.	1 "	"	"	90	"
25.	1 "	"	"	90	"
26.	1 "	"	"	90	"
27.	1 "	"	"	90	"
28.	1 "	"	"	98	"
29.	1 "	"	"	90	"
30.	1 "	"	"	88	"
31.	1 "	men's figured	shoes	74	"
32.	1 "	"	"	53 }	"
		and plain	"	21 }	
33.	1 ladies' figured	"	"	57 }	"
	and plain	"	"	40 }	
34.	1 box	plain ladies'	"	113	"
35.	1 "	"	"	100	"
			15 boxes	1,393	"

‡	36.	1	box	ladies' plain shoes containing	100	pairs.
	37.	1	"	" "	100	"
	38.	1	"	" "	100	"
	39.	1	"	" "	90	"
	40.	1	"	misses' " "	131	"
	41.	1	"	figured "	131	"
	42.	1	"	ladies' and misses' fig'd	118	"
	43.	1	"	ladies' figured "	100	"
	44.	1	"	" "	100	"
	45.	1	"	" "	100	"
	46.	1	"	" "	100	"
	47.	1	"	" "	106	"
	48.	1	"	men's fig'd [and] plain and ladies' fig'd shoes	98	"
	49.	1	"	children's figured "	223	"
		14	boxes	" "	1,607	"
		10	"	" "	729	"
		10	"	" "	972	"
		15	"	" "	1,393	"
		49	boxes	" "	4,701	pairs.

CONSULATE OF THE UNITED STATES,
Para, 22d August, 1845.

I do hereby certify, that the current value of the United States or Spanish dollar, in the present currency of this province, is (reis 2 $000) two mil reas.

[L. S.] In the testimony whereof, witness my hand and official seal. Para ut supra.

(Signed) BENJAMIN UPTON, JR.,
Acting consul, U. S.

CONSULATE OF THE UNITED STATES.

Personally appeared before me, William McCullock, of the house of A. Campbell & Co., of this city, who solemnly declares and says, that the articles mentioned in the annexed invoice are charged at their actual cost and present market value.

[L. S.] In testimony whereof, I have hereunto subscribed my name and affixed my seal. Done at Para, this twenty-second day of August, 1845.

BENJAMIN UPTON, JR.,
Acting consul.

Invoice No. 2.

Invoice of 80 boxes India rubber shoes shipped on board the brig "Lowell," Jarvis, master, bound for New York, consigned to Messrs. Allen & Paxen there, by and on account and risk of the undersigned.

G † J ‡ 1 *a* 80	80 boxes, containing 7,483 pairs unmanufactured India rubber shoes, *a* 400 - - - -	2,993,200
	12 per cent. export duty - -	359,184
	Capatazias and berepezo - -	15,145
	Sello - - - -	2,993
	Hay, &c., for stuffing - -	12,580
	Twine, 3,600; nails, 13 ‡ 000 -	16,600
	Stuffing 623 dozen pairs - -	62,300
	Cost of 80 boxes - - -	144,000
	Porterage to wharf - - -	12,800
	Consul's certificate - - -	8,000
	E. and O. E.	R 3,626,802

PARA, *22d August*, 1845.

MANOIL ARTO. G. CZ. & JERMAS.

CONSULATE OF THE UNITED STATES.

Personally appeared at this consulate, Francisco Louis Gonsalves, of the firm of Man'l Caetano Gonsalves & Jemac, merchants of this place, who solemnly declares and says, that the annexed invoice of rubber shoes are bona fide the property of the within mentioned Manuel Caetano Gonsalves & Irmao; and, further, that they are charged at their actual cost and present value in this market.

[L. S.] In testimony whereof, I do hereby subscribe my name and affix my official seal, at Para, this 22d day of August, 1845.

(Signed) BENJAMIN UPTON,
Acting consul.

CONSULATE OF THE UNITED STATES.
Para, 22d August, 1845.

I do hereby certify, that the current value of the United States or Spanish dollar, in the present currency of this province, is (reis 2 ‡) two mil reas.

[L. S.] In witness whereof, witness my hand and official seal. Para ut supra.

BENJAMIN UPTON, JR.,
Acting consul of U. S.

Specification of 80 *boxes India rubber shoes shipped by Manoil Caetano Gonsalves & Irmao, per brig "Lowell."*

Marks.	Nos.	Quantity.	Pairs.
G & J ‡	1	Ladies' figured shoes - - -	96
	2	" " - - - -	103
	3	" " - - - -	101
	4	" " - - - -	113
	5	" " - - - -	112
	6	" " - - - -	109
	7	" " - - - -	98
	8	" " - - - -	102
	9	" " - - - -	110
	10	Misses' shoes - - - -	155
	11	" figured and plain - - -	140
	12	Ladies' plain - - -	114
	13	" - - - - -	110
	14	Plain shoes - - - -	75
	15	Men's figured shoes - - -	77
	16	" " - - - -	78
	17	" " - - - -	69
	18	Ladies' " - - - -	96
	19	Men's figured and plain - - -	57
	20	Ladies' figured - - - -	93
	21	" and plain - - -	76
	22	" - - - - -	82
	23	" - - - - -	106
	24	" - - - - -	85
	25	" - - - - -	101
	26	" - - - - -	88
	27	" - - - - -	101
	28	" - - - - -	98
	29	" - - - - -	107
	30	Ladies' plain - - - -	102
	31	" figured - - - -	97
	32	" " - - - -	92
	33	Assorted - - - - -	120
	34	Men's plain - - - -	59
	35	" - - - - -	97
	36	Figured - - - - -	63
	37	" - - - - -	93
	38	" - - - - -	96
	39	" - - - - -	105
	40	Plain - - - - -	65

Specification—Continued.

Marks.	Nos.	Quantity.	Pairs.
G & J ‡	41	Figured - - - - -	68
	42	" - - - - -	68
	43	" - - - - -	68
	44	" - - - - -	70
	45	" - - - - -	70
	46	" - - - - -	68
	47	" - - - - -	69
	48	" - - - - -	72
	49	" - - - - -	70
	50	" - - - - -	70
	51	" - - - - -	69
	52	" - - - - -	68
	53	" - - - - -	67
	54	" - - - - -	68
	55	" - - - - -	83
	56	" - - - - -	70
	57	Plain - - - - -	85
	58	Figured - - - - -	93
	59	" - - - - -	86
	60	" - - - - -	93
	61	" - - - - -	95
	62	" - - - - -	102
	63	" - - - - -	82
	64	" - - - - -	95
	65	" - - - - -	96
	66	" - - - - -	102
	67	" - - - - -	99
	68	" - - - - -	98
	69	" - - - - -	95
	70	" - - - - -	98
	71	" - - - - -	171
	72	" and plain - - -	145
	73	Plain - - - - -	181
	74	Figured - - - - -	99
	75	" - - - - -	97
	76	" - - - - -	93
	77	" - - - - -	98
	78	" and plain - - -	106
	79	" " - - -	110
	80	" - - - - -	95
		Pairs in all - - - -	7,483

(Signed) MANOIL ARTO. G. CZ. & IRMAO.

Invoice No. 3.

PARA, 22 *de Auguston*, 1845.

Factura detregentas caizas com capatos de boracha abaizo dellarados com amuren que perconta erisco de Senor Jose Alvez de Penna, temo cariezado Para—New York, no barque Amarican Lowell, Capatas Nelson Jarvis, etragar p. Sen'r Allan de Parton en assuaderne.

P No. 1 *a* 300 caizas com 32682 pairs de capas to de barachos 400 13072 - - - - - $800

Despezas.

300	caizas vagues para or capato 1800 - - -	540 ‡ 000
2723½	dugeos depares de capato duchy 5 a 100 - -	275 ‡ 350
32	lb. detio de vello - - - - -	16 ‡ 000
Capim. mumh.	- - - - -	150 ‡ 000
Pregos	- - - - - - -	50 ‡ 000
Caneto e baizas	- - - - - -	45 ‡ 000
Despecho e Alfansigo	- - - - -	1750 ‡ 000
4 pezos a cancele	2 ‡ - - - - -	8 ‡ 000

R. 15904 ‡ 150

MANOIL JOSE DE CANALHO & CO.

Specification of 300 *cases India rubber shoes, to the address of Messrs. Allen & Paxson, of New York, per brig Lowell, Captain Nelson Jarvis, Para, August*, 1845.

P ‡ *a* 300	300 cases.	I. R. shoes each.	Containing as follows:
1—74 pairs	‡19—137 pairs	‡36—88 pairs	‡54—98 pairs
2—64 "	20—84 "	37—81 "	55—86 "
3—165 "	21—90 "	38—79 "	56—80 "
4—194 "	22—128 "	39—82 "	57—84 "
5—253 "	23—138 "	40—80 "	58—97 "
6—303 "	24—87 "	41—80 "	59—88 "
7—203 "	25—80 "	42—112 "	60—91 "
8—191 "	26—101 "	43—85 "	61—80 "
9—107 "	27—91 "	44—93 "	62—113 "
10—74 "	28—82 "	45—70 "	63—100 "
11—66 "	29—83 "	46—105 "	64—91 "
12—133 "	30—78 "	47—85 "	65—82 "
13—85 "	31—86 "	48—111 "	66—85 "
14—66 "	32—81 "	49—99 "	67—76 "
15—131 "	33—83 "	50—90 "	68—75 "
16—102 "	34—96 "	51—91 "	69—117 "
17—223 "	35—92 "	52—82 "	70—104 "
18—108 "	4157 pairs	53—84 "	71—131 "

P ‡ *a* 300		300 cases.		I. R. shoes each.		Containing as follows:	
‡72—79	pairs	‡114—98	pairs	‡156—137	pairs	‡198—99	pairs
73—103	"	115—96	"	157—128	"	199—107	"
74—83	"	116—96	"	158—119	"	200—146	"
75—81	"	117—91	"	159—127	"	201—97	"
76—82	"	118—94	"	160—124	"	202—92	"
77—98	"	119—91	"	161—93	"	203—137	"
78—77	"	120—95	"	162—124	"	204—104	"
79—80	"	121—94	"	163—105	"	205—95	"
80—77	"	122—96	"	164—139	"	206—124	"
81—102	"	123—94	"	165—108	"	207—121	"
82—82	"	124—90	"	166—101	"	208—137	"
83—99	"	125—68	"	167—101	"	209—128	"
84—103	"	126—91	"	168—81	"	210—118	"
85—86	"	127—120	"	169—139	"	211—108	"
86—63	"	128—85	"	170—98	"	212—100	"
87—84	"	129—83	"	171—119	"	213—131	"
88—87	"	130—105	"	172—100	"	214—122	"
89—82	"	131—103	"	173—97	"	215—134	"
90—72	"	132—125	"	174—105	"	216—104	"
91—95	"	133—129	"	175—107	"	217—104	"
92—71	"	134—104	"	176—127	"	218—98	"
93—92	"	135—119	"	177—116	"	219—114	"
94—81	"	136—112	"	178—127	"	220—93	"
95—88	"	137—83	"	179—126	"	221—131	"
96—103	"	138—100	"	180—124	"	222—133	"
97—92	"	139—109	"	181—99	"	223—95	"
98—73	"	140—107	"	182—92	"	224—131	"
99—79	"	141—134	"	183—124	"	225—102	"
100—95	"	142—112	"	184—136	"	226—116	"
101—109	"	143—88	"	185—95	"	227—116	"
102—77	"	144—97	"	186—90	"	228—93	"
103—101	"	145—113	"	187—140	"	229—112	"
104—85	"	146—85	"	188—115	"	230—106	"
105—98	"	147—73	"	189—126	"	231—96	"
106—73	"	148—104	"	190—132	"	232—118	"
107—86	"	149—109	"	191—118	"	233—112	"
108—87	"	150—108	"	192—100	"	234—131	"
109—90	"	151—112	"	193—128	"	235—137	"
110—91	"	152—150	"	194—124	"	236—146	"
111—82	"	153—127	"	195—96	"	237—107	"
112—94	"	154—127	"	196—105	"	238—106	"
113—86	"	155—122	"	197—92	"	239—109	"

Specification—Continued.

P ‡ *a* 300	300 cases.	I. R. shoes each.	Containing as follows:
‡240—99 pairs	‡256—126 pairs	‡271—103 pairs	‡286—128 pairs
241—130 "	257—120 "	272—123 "	287—116 "
242—114 "	258—129 "	273—95 "	288—200 "
243—111 "	259—96 "	274—95 "	289—98 "
244—129 "	260—136 "	275—109 "	290—102 "
245—113 "	261—130 "	276—129 "	291—102 "
246—104 "	262—125 "	277—124 "	292—104 "
247—128 "	263—105 "	278—122 "	293—200 "
248—115 "	264—105 "	279—90 "	294—210 "
249—134 "	265—97 "	280—93 "	295—214 "
250—124 "	266—102 "	281—123 "	296—104 "
251—107 "	267—126 "	282—97 "	297—86 "
252—130 "	268—113 "	283—100 "	298—158 "
253—111 "	269—140 "	284—136 "	299—240 "
254—128 "	270—138 "	285—136 "	300—252 "
255—128 "			
18,280 pairs	22,805 pairs	27,514 pairs	36,684 pairs

CONSULATE OF THE UNITED STATES.

Personally appeared at this consulate, Manoil Jose de Canallo & Co., merchants of this city, who solemnly declares and says, that the annexed invoice of rubber shoes is bona fide the property of the within mentioned Jose Alvez de Penna of this province; and further, that the within shoes are charged at their actual cost and present market value.

In testimony whereof I have hereunto subscribed my name and affixed my official seal. Done at Para, this 22d day of August, 1845.

BENJAMIN UPTON, Jr., *Acting Consul.*

CONSULATE OF THE UNITED STATES,

Para, 22d August, 1845.

I do hereby certify, that the current value of the United States or Spanish dollar in the present currency of this province, is (reis 2‡) two mil reas.

In testimony whereof, witness my hand and official seal.

BENJAMIN UPTON, Jr.,

[L. S.] *Acting consul of U. S.*

It appeared, by endorsements on the invoices, that the several cases above mentioned, having been examined by the United States apprai-

sers, were returned by them to the defendant, then being collector of the port of New York, as India rubber shoes, and that the defendant, as such collector, pursuant to the decision and instructions of the Treasury Department, charged on the said goods a duty of 30 per centum ad valorem, under the 10th subdivision of the 5th section of the act of the 30th of August, 1842, "to provide revenue from imports, and to change and modify existing laws imposing duties on imports, and for other purposes," which duty amounted, on the said articles, to the sum of three thousand seven hundred and thirty-five dollars and sixty cents, and which sum was, on the 22d September, 1845, paid by the plaintiffs to the defendant as collector, under a protest in writing, in the following words:

To C. W. Lawrence, esq., *Collector:*

Sir: We hereby protest against the payment of thirty per cent. duty charged on unmanufactured rubbers, contained in this entry; claiming that said goods should be admitted to entry duty free, under the 7th subdivision of 9th section of the Tariff law of 30th August, 1842, which exempts from duty India rubber in bottles or sheets, or otherwise unmanufactured.

We pay the amount exacted in order to get possession of the goods, claiming to have the same refunded.

New York, September 20th, 1845.

ALLEN & PAXSON.

It further appeared by the testimony of the witness, Samuel G. Ogden, junior, that the amount of duties so paid by the plaintiffs had been paid by the defendant into the Treasury of the United States, and that the defendant, as such collector, had afterwards refunded to the plaintiffs, in debentures granted by way of drawback upon a portion of said goods exported by the plaintiffs from the United States, the sum of eleven hundred and twenty-six dollars and eighty-eight cents, leaving two thousand six hundred and eighty dollars and eighty cents as the amount of said duties yet remaining in the treasury; which sum, with interest at seven per centum according to the law of the State of New York, the plaintiffs claimed to recover.

Samples, which were proved by Edward Hodges and other witnesses to have been taken from several of the packages enumerated in the invoices and described therein as plain shoes, were produced by the plaintiffs' counsel, and submitted to the inspection of the jury; and it was proved by this witness, and conceded on the part of the defendant, that the shoes composing the several importations in question, were, all of them, formed exclusively of India rubber, and in that respect were like the samples produced, the only differences between any of said shoes composing said importations being that they were of different sizes, and that some were plain while others were figured, by the indentation of lines; and thereupon the plaintiffs' counsel produced and proposed to read the deposition, so far as the same was taken in his direct exam-

nation, of Samuel K. Appleton, a witness who had been examined by consent, and which deposition was in the following words:

CIRCUIT COURT OF THE UNITED STATES,
Southern district of New York:

GILBERT ALLEN and Samuel C. Paxson,
vs.
CORNELIUS W. LAWRENCE.

NEW YORK, *ss:*

Samuel K. Appleton, ship master, sailing from the port of New York, being duly sworn, deposeth and saith, that he is about to proceed to sea, and expects to sail on some day this week, or on Sunday next; that he has visited Para, in Brazil, and has frequently witnessed the operation of producing India rubber in the sheet, in the form of bottles, shoes, and other shapes. India rubber, in all its forms, is commonly produced by dipping the various moulds in use into a vessel containing the milky juice which exudes from incisions made into certain trees; this juice is milk white in color, and becomes of a dark color by exposure to smoke, and also by age. The sheet is made by frequent dipping in the juice of a thin flat spade shaped piece of wood, with a handle to it for convenient use. The bottle, by like dipping of a bottle shaped mould of clay. It is produced in the form of a shoe by like dipping of a foot-shaped mould of clay or of wood. Witness has seen this process several times years ago, and within the last six months. India rubber does not exist until produced by this process of dipping, and then drying by exposure to the air or fire, on the mould or form which may be used. India rubber, in the form of sheets, bottles, or shoes, is produced by the same identical process, and one is no more a manufacture than the other. Deponent is very familiar, by long experience, with all the various forms and shapes of India rubber imported into this country, and has never known an article of manufactured India rubber to be imported from Brazil. The Para rubbers, or India rubber shoes, as imported, require to be manufactured after their importation before they are fit for use as shoes. As imported, they are not fabrics or manufactures of India rubber. They are fitted to be worn as shoes sometimes by bestowing labor upon them in this country, after their importation. He has often seen manufactured India rubber shoes; they were made in this country, and are fabrics of India rubber.

Being cross examined by the defendant's attorney, the witness says, that he is now the master of the bark Guilford; that previously he had made three voyages to Para in the bark Undine. The Guilford belongs to P. J. Farnham & Co. The Undine belonged to James Bishop & Co.

Immediately after the shoe has as many coatings as it requires, it is figured, by a person taking the shoe in his hand and marking on it with an instrument such figures or designs as he chooses to give it; this marking may be done with a nail or sharpened stick, or anything else that is strong and sharp enough.

I have never known of any other India rubber shoes being imported into this country except these Para India rubber shoes. "India rubber shoes" is the name by which this article, imported from Para, is known in trade and commerce. I have never known of it by any other name. I have made, in all, 51 voyages to Para and Maranham, and I have been familiar with the article of India rubber shoes since the year 1828. From the time the mould is first dipped into the milk, until it is ready for the figure, is usually seven or eight minutes; it depends on the quantity of milk; when there is not enough to admit of the mould being wholly dipped into it, the operation is longer. The last I saw took fifteen or sixteen minutes, there not being milk enough to allow of the mould being immersed.

Direct examination resumed.

Should think about one-half the imported rubbers are figured. Very few bottles are figured; only those made for apothecaries' use. The scratching is done by the Indians, blacks, and by some whites. It is done very rapidly, astonishingly quick. The time required to make a bottle is less than the time it takes to make a shoe, because they are smaller. If the bottle be of the same size as the mould of the shoe, it would take the same time. From my employment as a ship master I would not be as likely to know that other India rubber shoes were imported as persons engaged in different business.

On my last voyage in the bark Undine I imported thirteen or fourteen hundred pairs of shoes on my own account. They were entered shoes on the manifest and on the invoice, and they were passed free, and without duties, at the custom-house. I sent a bag full of them, by order of the custom-house, to the custom-house for examination.

Did you sell those shoes; and, if so, at what price, as compared with the stuffed shoes?

Question objected to by the defendant's attorney.

Answer. I sold them within two cents a pair of those which were imported stuffed with straw or husks of rice. I don't recollect the name of the purchaser. I can produce the memorandum of the sale. Ripley, of Philadelphia, sent the man to me. He lives in Philadelphia, and does business in the shoe line.

S. K. APPLETON.

Sworn this 24th day of April, 1847, before me,

ALEX'R GARDINER.

The counsel for the defendant objected to the reading of all those parts of the said deposition which related to the manufacture of India rubber in shoes, or in any other form, in Para, in Brazil, as irrelevant to the issue in this cause; under which issue the said counsel insisted that the only questions to be tried and determined were:

1st. Whether or not the articles imported by the plaintiffs, and now the subject of controversy, were distinct articles of trade and commerce, in the ports of the United States, at the time of the passage of the Tariff law of August, 1842. And,

2d. If they were, then by what name or denomination were such articles then called and known, by and among commercial men, in the ports of the United States?

Wherefore the said counsel insisted, that all those parts of said deposition which did not relate to one or other of said questions were incompetent and inadmissible as evidence; and the said counsel requested the court to exclude the parts of said deposition so pointed out and objected to, and not to permit the same to be read in evidence to the jury; but the counsel for the plaintiffs insisted that such parts of said deposition were relevant and admissible as evidence in the case; and his honor, the presiding judge, decided and ruled, that the same were relevant and admissible as evidence, and permitted the same to be read to the jury; to which decision and ruling of the said judge the counsel for the defendant did then and there except.

The counsel for the said defendant then and there objected to the reading of the following parts of the said deposition or evidence, that is to say, to the words "and one is no more a manufacture than the other;" and also to the words "and has never known an article of manufactured India rubber to be imported from Brazil;" and also to the words "as imported they are not fabrics or manufactures of India rubber," as irrelevant to the issue, and also as expressing merely the opinion of the witness, which opinion was not competent or admissible as evidence; and the said counsel requested the court to exclude the parts of the said deposition last above mentioned, and not to permit the same to be read to the said jury; but the counsel for the plaintiffs insisted that such parts of the said deposition were relevant and admissible; and his honor, the presiding judge, decided and ruled, that the same were relevant and admissible as evidence, and permitted the same to be read to the jury; to which decision and ruling of the said judge the counsel for the defendant did then and there except.

The said deposition, so far as the same had been taken on the direct examination of the witness, was then read, by the counsel for the plaintiff, to the jury; and, so far as it had been taken on the cross examination of said witness, it was read to them by the counsel for the defendant.

John Thornly, a witness on the part of the plaintiffs, testified, that he resides in Philadelphia, and is a manufacturer of, and dealer in, India rubber shoes, and has been so since 1835. Shoes have been manufactured in this country since 1840, and, I believe, since 1838.

Specimens of shoes manufactured in the United States, and composed of India rubber, with and without addition of cloth or leather, or of both these articles, being produced by the plaintiffs' counsel, and shown to the witness, he testified that these articles were manufactured in the United States, and were known in trade in this country prior to 1842.

Being asked by the judge, What do you call manufactured India rubber shoes? He answered: These are manufactured shoes, (identifying several different pairs of the American made India rubber shoes.) He made such in 1840. This class of shoes was made by the Roxbury

India Rubber Company as far back as 1836. Believes he sold them as far back as then. There were also other kinds of India rubber shoes besides those produced, manufactured and sold in the United States prior to that time. There was a kind made by lining, putting a leather sole in and furring it, which added 80 per cent. to the cost. Witness knows the article of India rubber shoes imported from Para, and has known them since 1835. These articles cannot be used as shoes in the state in which they are imported. To fit them for use they must be washed, turned, drawn over a last, cleaned, and blacked. This labor makes an addition to the cost of from three to five cents per pair, or fifteen or twenty per cent. This is the lowest kind of manufacture to fit them for use. Has never known them to be sold or worn in the United States until they had received some manufacture here.

The witness further testified that shoes can be, and are, made in this country out of bottles of India rubber; and that India rubber suspenders are made out of India rubber shoes. That he had once seen in the United States one pair of French India rubber shoes, but he cannot describe them. That he purchases India rubber in sheets, which he splits and makes into India rubber shoes. That he also uses the imported India rubber shoes in the same way, and for this purpose sometimes cuts up the figured shoes, but prefers the plain. That India rubber bottles are cut up and used for the same purpose. There is a manufactory in Philadelphia that makes 450 dozen of suspenders a week out of the imported India rubber shoe—the Para shoe—cut up for that purpose. Purchases sheet India rubber, and uses that also for cutting up, as well as shoes; makes shoes out of the sheet rubber. For this purpose it is split, and it can be split as thin as a sheet of paper. There is a kind of manufactured sheet rubber. This is it, (produced.) It was manufactured in Paris or London. The shoes are worth no more for being figured; the plain are preferred, and are better for cutting up. The shoes imported stuffed are cut up for manufacturing as well as others. They are rather preferred to those not stuffed. The bottles are used for the same purposes as the shoes—for cutting up and manufacturing. The imported shoes, the alligators, and the sheet produced, are also made in the same way.

On being cross-examined, he testified, that he never imported an article of India rubber from South America.

William L. Rushton, a witness for the plaintiffs, testified, that he was a chemist, and had dealt, in the city of New York, in India rubber shoes since 1827. Witness imported in that year, and afterwards, for many years, from Para, shoes of the kind now the subject of controversy, prepared them for sale by merely trimming the edges, putting them on a last, cleaning and varnishing them; kept them on the last about twenty-four hours—seldom less, and sometimes longer. The first cask that he imported he sold at retail, without their having been lasted. But, after 1827, he never sold them to customers for use, without their having been first put on a last.

The cost of thus preparing them for sale was about three or four cents per pair.

The witness further testified, that India rubber in shoes, bottles, and sheets, and also stationers' India rubber, might be dissolved, and then manufactured into shoes and various other articles; and that this process is often pursued in the United States.

On his cross examination, the witness said, that the articles in question were known in trade in New York, in the year 1827, by the name of "India rubber shoes." So far as he knew, they were always known in trade and commerce by that name. He imported them by that name, and never knew of their having any other name. The articles which he imported, and of which he has spoken in his direct examination, were like the specimens from the plaintiffs' importations now produced and exhibited, sometimes better and sometimes worse. They were invoiced by the name of "India rubber shoes."

The plaintiffs' counsel then called, as witness, James E. Smith, Amory Edwards, George G. Wales, and William H. Edwards, who, being sworn, severally testified, that they were acquainted with the articles now the subject of controversy, and with other articles of India rubber imported from Para; that they had been at Para, and were acquainted with the process of producing or making India rubber; that the juice or sap of the trees, when collected, is about the color and consistency of milk, and is called milk; that it is placed in a vessel of convenient size; that moulds of clay, or of wood covered with clay, in the shape of a shoe, or bottle, or other shape, and to which a handle is attached, are dipped in the milk, and immediately held in the heat and smoke of a fire made of a peculiar kind of nut, which dries the milk and gives it a dark color; that this process is repeated several times until the coating is sufficiently thick, when the article is taken from the mould by breaking the clay of which it is made, or with which it is covered, and the pieces of clay are taken out; that shoes and bottles are then generally stuffed with straw, and that the article is then ready for sale and exportation; that bottles are made in two or three minutes; that it takes somewhat longer, say about five minutes, to prepare a shoe; there must be a new mould for every bottle—the foot-shaped mould is the best form for dipping. The shoe shape is the most convenient mode of making India rubber. The stuffing of the shoe is done by the parties who buy them in Para for exportation. The shoes are sometimes shipped in bulk, and sometimes stuffed. The term, India rubber shoes, comprehends all kinds of shoes made of India rubber, both manufactured and unmanufactured; that the price of India rubber shoes, in Para, has varied greatly since 1826; that the great demand for India rubber, of late years, in the United States, for dissolving for manufacturing purposes, has raised the price in Para; that no such things as suspenders are made in Para; that nothing is made there in a more manufactured state than the square sheets; that India rubber shoes are sometimes sold and shipped at Para without being stuffed with straw.

The foregoing testimony of the said James E. Smith, Amory Ed-

wards, George C. Wales, and William H. Edwards, was objected to in due time by the counsel for the defendant, upon the examination of said witnesses respectively, as irrelevant and inadmissible for the same reasons as those insisted on by the said counsel in support of the first objection, hereinbefore mentioned, to the deposition of Samuel K. Appleton; but his honor the presiding judge overruled the said objection, and decided that the testimony, as above stated, of the said several witnesses, was relevant and competent evidence, and permitted the same to be given to the said jury; to which decision of the said judge the counsel for the said defendant did then and there except.

James E. Smith, one of the said witnesses, being further examined on the part of the plaintiffs, also testified that he is a merchant in New York; that his father had been concerned in this city, for several years, in the importation and finishing of India rubber shoes for sale, and in the manufacturing of various articles of India rubber; that it costs from three to five cents per pair for the lowest kind of finishing of India rubber shoes, to fit them for sale; that they often cut up, in his father's establishment, India rubber shoes for various manufactures; that, prior to 1842, his father manufactured eight or ten different kinds of India rubber shoes; that they manufactured, in and before 1842, all the kinds of India rubber shoes which are now made in this country.

On his cross examination, the witness stated, that the articles imported by the plaintiffs, and now the subject of controversy, are and always have been known, in trade and commerce, among importing merchants, by the name of "India rubber shoes;" they were so called from the first, and have never gone by any other name. India rubber articles, imported from Para, take their commercial name from the form which has been given to them; as "India rubber shoes," "India rubber bottles," "India rubber sheets." Being re-examined, he said the name India rubber shoes included all kinds.

John L. Ripley, a witness produced on the part of the plaintiffs, testified that he resides in Philadelphia and is a manufacturer of India rubber shoes. That the imported shoes are finished by being washed in warm water, trimmed with shears, lasted, and varnished with black varnish. Never sold to be worn on the feet till finished. Until finished they cannot be worn, without coming to pieces. The finishing costs from three to five cents per pair, and adds to the value twenty or twenty-five per cent. In witness's factory, he cuts up the imported shoe; often the manufacturers dissolve them. This shoe (taking a specimen of an American manufactured India rubber shoe produced) is made by dissolving. Witness takes imported shoes, cuts the sole out, cuts it off at the quarter, so as to make a flat surface to split. It is then split to the proper thickness. The sheet rubber is equally good for manufacturing shoes as the rubber in the shoe form. Knows Captain Appleton; saw his shoes here; saw the same shoes in Philadelphia. They were ladies' and gentlemen's shoes, having no straw in them; they were imported in bulk.

The testimony of this witness, as to the shoes of Capt. Appleton, was

objected to by the counsel for the defendant as irrelevant; but his honor the presiding judge decided that the same was relevant, and permitted the same to be given to the jury; to which decision the said counsel did then and there except.

If witness received an order for India rubber shoes, he would not answer it, till he knew whether it was the imported shoe or some other that was wanted. Without such explanation, would not know what to send. Witness calls the shoes imported by plaintiffs unmanufactured shoes. The name "India rubber shoes" comprehends all kinds of India rubber shoes. Witness has bought stuffed shoes of the plaintiffs to cut up and use in his business, and used them for the same purposes as he uses sheet rubber and rubber in slabs.

On his cross examination he testified, that he sells the imported India rubber shoe, but does not import it. Buys them here, and in Boston, and in Salem; buys them of the importers. The name in trade and commerce of the shoes imported by plaintiffs, and now here, is "India rubber shoes." Witness orders them from the importers by the name of "India rubber shoes," because the importers have dealings in no other kind of India rubber shoes but these. Witness manufactures five or six kinds of India rubber shoes. If a person should send an order to witness for a dozen manufactured India rubber shoes, witness would not fulfil the order unless they were more particularly described, there being such a variety of the manufactured articles; but he would not send, in reply to it, the ordinary imported India rubber shoe. If I received an order for India rubber shoes, I would not without further explanation know what to send, because the term India rubber shoes comprehends all kinds of shoes. Has known the imported India rubber shoes about eight years. As long as he has been in the habit of buying these articles from importers, he has known them by the name of "India rubber shoes." Witness never knew any India rubber shoes to be imported, except like those now in controversy and the unstuffed,

John Davenport, a witness for the plaintiffs, testified, that he is a merchant, and was formerly employed in the custom-house, as deputy naval officer and clerk, for four years. As such he knew, in May, 1844, of an importation of India rubber shoes, with leather soles not sewed on; he made a record of this importation, in his book, for his guidance.

On his cross examination, he stated that he did not see the goods themselves, and does not know from what port they came.

His memorandum book does not state the name of the importers. He made the record from the report of the appraisers. It was not his business to see goods. The articles now in dispute are known in trade and commerce, among importers, by the name [of] "India rubber shoes." Witness never knew or heard of their being known by any other name in trade and commerce among importers.

George C. Wales, a witness on the part of the plaintiffs, testified, that he resides in Boston, and has been in the India rubber business four or five years. Between March and October, 1846, witness shipped India rubber shoes, like those of plaintiffs from Para, to Salem. The first shipment was not charged with duties; the two others were charged

with duties. The first shipment was of shoes in bulk, unstuffed. The other two shipments were of stuffed shoes. Witness calls the shoes made of India rubber in this country, with leather soles, &c., "manufactured India rubber shoes." The imported articles are "manufactured shoes."

On his cross examination he testified, that he sells India rubber shoes on commission for the importers. The imported articles are known by the name of "India rubber shoes" in the rough.

The invoice of the first shipment of shoes spoken of by him was "India rubber; it may have been "India rubber shoes." Has never known any "India rubber shoes" to be imported into Boston or Salem, or any other port, except such as those which came from Para.

William Ryder, a witness on the part of the plaintiffs, testified, that he is a manufacturer of India rubber goods at Harlem, making Government articles, such as haversacks, knapsacks, canteens, water tanks, grain bags, &c., &c. Buys India rubber in bottles, sheets, shoes, and lumps, and works them up into these various articles.

On his cross examination he said, that by "shoes" he means the imported India rubber shoes.

Daniel Hodgman, a witness for the plaintiffs, testified, that he was a manufacturer of India rubber articles, and has been since 1839. Is a finisher of the imported India rubber shoe. He heard the testimony of John L. Ripley; finishes in the same way. The imported shoes cannot be worn until they are finished in the way described by Mr. Ripley. Witness deals in India rubber shoes, which are sold, and in India rubber cloth. If he had an order for "unmanufactured India rubber shoes," he would send the imported shoe; if the order was for "manufactured India rubber shoes," he would inquire what kind was wanted. All India rubber shoes are known under the general name of "India rubber shoes."

On being cross examined he testified, that he never imported India rubber shoes. Has bought the imported articles at auction sales, but not before August, 1842. They are known in trade by the name of "India rubber shoes." Witness has known them by that name, and has never known them by any other name among merchants. Witness calls them "unmanufactured" or "unfinished," because he considers them to be so. The stuffed shoes are known as India rubber shoes unfinished. He has known them by that name ever since he dealt in them.

William Ward, a witness for the plaintiffs, testified, that he is employed in the house of James Bishop & Co.; they received a consignment of "India rubber shoes;" some came in cases and stuffed, and some unstuffed and in bulk. On those that were stuffed, 30 per cent. duty was charged; the others entered free at the New York custom-house. Witness entered the goods. They were received the latter part of April, 1846, by the bark Undine.

Isaac S. Hone, a witness for the plaintiffs, testified, that he was assistant collector under Mr. Curtis from 1841 to 1844. That India rub-

ber shoes imported from Para, like those now in dispute, were passed free by witness' decision for about four months. Three or four importations were received during that time. The Secretary of the Treasury then ordered the collector to charge the duty of 30 per cent. on these articles.

George D. Noble, a witness for the plaintiffs, testified, that he is a clerk with E. Corning & Sons. Witness identifies certain India rubber shoes, now present, as some of the shoes imported by E. Corning and Sons. They were imported in August last, in the brig Orbit, and passed as free, by the name of unstuffed India rubber shoes; they paid duties on stuffed India rubber shoes, which came by the same vessel. India rubber in bottles and sheets is always passed at the custom-house free; looks at an invoice; says it is an invoice of a quantity of shoes imported from Para, by E. Corning & Sons, by the Orbit. The invoice contains a separate charge for stuffing the shoes, and another for packing in boxes. The shoes are bought unstuffed, and they are then stuffed with hay, or straw, to keep them from sticking to one another. We send the hay for the stuffing of the shoes to Para. Corning & Sons were large importers of shoes from Para under the act of 1842, and imported many thousand of pairs; by the same ship they imported stuffed shoes, which were charged 30 per cent. duty at the custom-house, and unstuffed shoes, which passed free of duty. The alligators (such as that) pass free; so do bottles, sheets, and slabs. Tube rubber, which is shaped like an old fashioned bottle, nearly square, with a nozzle, and rubber in images, come in free.

George C. Wales, being recalled by the plaintiffs' counsel, testified that India rubber shoes are bought in Para, by purchasers, in the unstuffed state, and stuffed by the purchaser. Being cross examined he said, the shoes are bought on the river in the unstuffed state, and they are called India rubber shoes while in that state.

Stephen W. Smith, a witness on the part of the plaintiffs, testified that he resides in Brooklyn; is one of the house of Smith, Torrey & Co.; was in the India rubber business, in which he was engaged from 1830 to February, 1846; before 1842, witness has seen imported manufactured India rubber shoes; some were brought to their store and exhibited as samples, by a person soliciting orders to purchase; they came from France and England.

India rubber shoes, to his knowledge, have been ordered from Para to be used in the United States for manufacturing purposes; that is, cut up and dissolved. The last imported manufactured shoe he saw was as late as 1845. It would not pay to import these shoes. The first objection was the price; the duties caused this. The second, the shape was not liked. In 1842 the term India rubber shoes included all India rubber shoes. An order for India rubber shoes prior to August, 1842, was too indefinite to be understood. There were more than forty kinds of India rubber shoes. An order to Para for India rubber shoes would have included stuffed and unstuffed.

On his cross examination he testified, that this was in the vicinity of

1835, between 1834 and 1837. They were shown, by the persons presenting them, merely as samples. Were made of sheet India rubber, lined with red cotton velvet, and had soles of leather or India rubber. At intervals, saw them till 1845. Never saw more than a few pairs at a time, and only as samples, or in consumers' hands; but has seen them at various times in the possession of persons soliciting orders. At short intervals, I have seen frequently such shoes from 1835 to 1845. Never knew of a quantity being imported by an importing merchant. Has no present knowledge of the place where they were made. The persons who showed them represented themselves as agents of the foreign manufacturers. Could not say whether they were entered at custom-house or not, nor whether imported in trunk or bale. Has known the articles now in dispute to be imported into the port of New York since 1830. They have been known among the merchants in New York, ever since he first became acquainted with them, by the name of "India rubber shoes." From 1830 to August, 1842, very frequently imported into port of New York, and always from Para, in Brazil. His father was extensively engaged in this business, and one of the first merchants here who did engage in it. The name India rubber shoes includes all kinds of India rubber shoes.

Edward Hodges, a witness for the plaintiffs, testified that they (the plaintiffs) imported 188 cases of stuffed shoes by the Washington barge in September, 1842; in October, 1842, 128 cases by the Roarer, and paid no duties. In December, 1842, they imported by the Washington barge 195 cases, and paid duties on them.

John Thornly, being recalled by the plaintiffs' counsel, testified that, in August, 1842, the words "India rubber shoes," in trade and commerce, included manufactured shoes as well as others.

Being cross examined he testified, that he never imported India rubber shoes, or India rubber in any form. Speaks of it as connected with his trade. In their bills to witness the importers called them India rubber shoes; and believes they never named them in such bills by any other name.

It was proved that the interest on $2,608 88, the balance of duties paid by the plaintiffs on the importation, now the subject of controversy, to the 13th May, 1847, was $299 81; and that, if the plaintiffs were entitled to recover in this suit, the verdict should be for $2,908 69.

And hereupon the counsel for the plaintiffs rested the case on their part.

The counsel for the defendant then called John H. Richards, as a witness on his part, who, being sworn, testified, that he keeps a retail shoe store in Vandam street, corner of Hudson, in this city. Has known the articles in dispute since 1829 or 1830. Has bought and sold them. They are known in trade and commerce as India rubber shoes. They were frequently bought and sold, from 1829 to 1842, in the port of New York. During all that period they were known in trade as common India rubber. Never knew them, in trade or commerce, by any other name. That witness sometimes washes them, and

sometimes not; he sells as many without washing as with; but they generally, before selling, undergo the same process as described by Thornly.

Charles G. Johnson, also a witness for the defendant, testified, that he is a retail shoemaker in Canal street, New York. Has known these articles for many years. Has often bought and sold them. Has never known them by any other name than common India rubber shoes. They undergo the same process as described by Thornly before selling. It costs little to finish them; it is a mere matter of pastime. He sometimes clips off the edges and washes them, and sometimes not. Never made any account of the clipping, &c. More than one half are sold without lasting. I am a retailer. There are persons who make a business of trimming these shoes.

Nicholas Groesbeck, also a witness for the defendant, testified, that he is a retail shoemaker in Carmine street, in this city; and has known and dealt in these articles for the last ten years. Has bought them as "India rubber shoes," sometimes of the importers in the original cases. Don't account the expense of trimming, &c., anything. Has sometimes sold them just trimming and taking the straw out without lasting. The clerks do the finishing and trimming, and it is included in the price of sale. He adds enough to the price to pay for the finishing and trimming. If we had bought them ready trimmed, they would have cost about 2 cents a pair more. All the kinds are called India rubber shoes.

George M. Smith, a witness for the defendant, testified that he keeps a retail boot and shoe store at No. 142, Chatham street, in this city. Has known these articles ten or twelve years. They are "India rubber shoes." Has never known them by any other name. Has bought and sold them by that name. Has bought them from the importers. Witness trims the tops, blacks them, sometimes lasts them, and sometimes not; as often the one way as the other. They are distinguished into plain and figured. Makes no account of the expense to them by trimming. It would take a man about a minute to color them and trim them. Witness sells them in retail and by wholesale.

Bernard McFeely, a witness for defendant, testified that he is a retail boot and shoe dealer at No. 142, Chatham street, in this city. Has bought and sold these articles for the last seven years. Generally bought them from original importers at auction sales. Some of specimens are plain India rubber shoes, others figured India rubber shoes; but they all come under the general head of "India rubber shoes." Witness generally trims them, and puts them on a last, before sale. The expense is about two cents and a half per pair. Calls them India rubber shoes as well before as after they are trimmed and lasted. They frequently sold them without being varnished; never without being trimmed.

Rufus P. Tuck, a witness for the defendant, testified that he is a shoe dealer in this city. Calls the articles in dispute India rubber shoes. Has known them in Salem, Massachusetts, ever since they were first imported. When he first became acquainted with them, they were known by the name of India rubber shoes, among importing merchants

and others dealing in them. Has never known of any other name. Has bought them of importing merchants by that name. In 1835, imported some himself from Para by the name [of] India rubber shoes. Has been at Para, in 1834 and 1835. They are bought and sold at Para, among merchants dealing in them there, by the name of "India rubber shoes." Never has known of manufactured India rubber shoes being imported into the United States. India rubber shoes, as known to commerce, come from Para or Maranham.

These articles never came to this country, prior to 1842, in a more finished state than these specimens. Never saw them in a more finished state at Para than these. The first he ever saw were as well finished as these, and these as well as the first. There has always been a remarkable uniformity in the appearance and finish of the articles, both before 1842 and since. Both before and since 1842, India rubber in bottles and sheets was extensively imported into the United States, for the purpose of being used in [the] manufactures of suspenders, life-preservers, India rubber frocks, &c. India rubber in sheets or slabs is also used for this purpose.

Cornelius S. Bogardus, a witness for defendant, testified that he is employed in the custom-house of this port, and was so employed in April, 1846. Witness generally gets the decision of the collector as to duties, and reports it to the deputy collector. Being shown the invoice presented by Captain Samuel K. Appleton, of the India rubber shoes mentioned in his deposition, the witness said that, prior to the entry of the goods, this invoice was presented to him. It then contained merely the account of charges, but did not state what the articles were. Witness permitted Captain Appleton to amend it. He did so. Witness did not look to see whether the articles were India rubber shoes or not. Witness never has known of India rubber shoes passing otherwise than at 30 per cent. duty. From the usual course of business, these goods of Captain Appleton must have passed without examination.

James T. Talman, a witness for defendant, testified that he is one of the deputy collectors of this port, and has been so since 1842. The importation by James Bishop & Co., by the Undine, was made before him. No examination of the goods was particularly directed. Witness finds on the invoice (which was produced) a direction, in his handwriting, in regard to examination of some other articles; but none in regard to the 361 arrobas of India rubber in bulk, from which he believes there was none. The entry by Captain Appleton also passed before him. Witness passed it as free, in consequence of the amendment, and did not direct an examination.

India rubber in bulk comes in various ways—in the form of bottles, sheets, squares, and blocks; when it comes in the form of shoes, they always intend to charge duties, under an order from the Treasury Department.

The defendant's counsel then offered to prove by this witness the receipt by the collector of New York, in November, 1842, of instructions from the Comptroller of the Treasury to charge upon common

India rubber shoes, imported from Brazil, in the state and condition of the articles in dispute in this case, the duty of 30 per centum ad valorem, under the 10th article of the 5th section of the Tariff act of 1842, as well as upon the India rubber shoes imported from France, or elsewhere, in a more finished condition, or of a better quality; to the admissibility of which evidence the counsel for the plaintiffs objected; and his honor, the presiding judge, decided that the said objection was well taken, and rejected the said evidence; to which decision of the said judge the counsel for the defendant did then and there except.

The defendant's counsel here rested his case.

George D. Noble, being recalled by the plaintiffs' counsel, testified, that India rubber tubes are frequently imported. They resemble a bottle, but are longer. Tubes almost always come stuffed. The entry of E. Corning & Sons, by the Orbit, in 1846, contained 17,354 pairs unmanufactured India rubber shoes, and 312 arrobas of India rubber in bulk. The boxes contained shoes not stuffed. Mr. Ziess, assistant appraiser, returned the India rubber in bulk as "old India rubber shoes, fit only to remanufacture," and it paid no duty.

And the plaintiffs' counsel again rested the case on their part.

The counsel for the defendant then prayed the court to decide the law of the case, and to instruct and charge the jury, as follows:

First. That in construing and applying the provisions of the Tariff law of August 30th, 1842, to the present case, the terms used therein are to be understood in their known commercial sense as used and understood in the ports of the United States prior to, and at the date of, said law.

Secondly. That as all "India rubber shoes," imported from foreign countries, are, by the said provisions, subject to thirty per cent. duty, the true and only inquiry in the present case is, whether, in a commercial sense, and among commercial men dealing therein, the articles in question were imported into, and usually known and bought and sold, in the ports of the United States, prior to and at the date of the law, under the name and denomination of "India rubber shoes."

Thirdly. That if the jury shall be satisfied, from the evidence, that the articles in question were imported into, and usually known and bought and sold, in the ports of the United States, prior to the 30th of August, 1842, under the name and denomination of "India rubber shoes," then they are liable, under the law, to a duty of 30 per cent. ad valorem, and the jury should be instructed to find for the defendant; and that, in the case stated, the jury should be instructed to find for the defendant, notwithstanding they should also be satisfied, from the evidence, either—

1st. That the term "India rubber shoes," as used in commerce, includes all other kinds of shoes made in whole or in part of India rubber, as well as these; or,

2d. That India rubber shoes, in a more finished condition, and of a better quality, were imported from England, France, or other coun-

tries, prior to 1842, and were then, and are now, known in the markets; or,

3d. That some additional labor is usually applied to these articles, or is necessary to fit them for convenient use as shoes; or,

4th. That these articles are extensively used by manufactures in the United States for the purpose of being made, in whole or in part, into other articles; or,

5th. That no more or other kind of labor is required to make these articles than is required to make India rubber in bottles or sheets, or other kinds of India rubber, which, by the seventh article of the ninth section, is entitled to admission as free.

It being insisted, on the part of the defendant, that neither of these circumstances, nor all of them combined, can nullify the explicit terms of the preceding 5th section, by which all kinds of "India rubber shoes" are subjected to the 30 per cent. duty, nor make free these articles, provided they are and were known in commerce under the name "India rubber shoes."

But his honor, the presiding judge, refused so to decide the law of the case, or so to instruct the jury; and, on the contrary, the said judge did then and there decide, and did then and there charge and instruct the said jury, that the case, in the view taken thereof by the court, entirely depended on the true legal construction of the Tariff act of August 30th, 1842, and involved no question of fact for the jury; that India rubber, when used, in whole or in part, in the manufacture of oil cloth, webbing, shoes, braces, or suspenders, or any other fabrics or manufactured articles, was, by the tenth article of the fifth section of this law, subjected to the duty of thirty per centum ad valorem, specified in the clause relating to these fabrics contained in said tenth article; that, by the seventh article of the ninth section of said act, India rubber, in bottles or sheet, or otherwise unmanufactured, is declared to be exempt from duty; that, by virtue of this clause, India rubber existing in the particular forms enumerated therein, and existing in any other form in which it may be imported, is free from duty, if unmanufactured; that, as these two clauses were both in the mind of the legislature, when treating of India rubber, they are to be construed together; and that so construed, the fair conclusion is, and such the said judge decided to be the true legal interpretation of said provisions, that Congress, in laying the duty, had special reference to the manufactured article in a finished state, and intended to allow India rubber to come in as free, whatever might be its form, if it had not been brought, by manufacture, into a finished state; that as it was not pretended that the goods in question were shoes manufactured out of the material called India rubber, and as it was admitted by all the witnesses that they were brought into the form of a shoe in the process of making the material called India rubber, they were not "India rubber shoes," within the meaning of the tenth article of the fifth section, but were to be regarded as raw material and as unmanufactured, within the meaning of the seventh article of the ninth section; that the goods in question were,

therefore, entitled to be admitted free of duty; that the plaintiffs having protested in writing against the payment of any duty thereon, and the collector having notwithstanding illegally exacted a duty of thirty per centum ad valorem thereon, the plaintiffs were entitled to recover back the moneys so exacted, except so far as the same had been refunded by way of drawback; and that the jury would, therefore, render a verdict for the amount of such remaining moneys, with interest thereon to the day of trial, in favor of the said plaintiffs.

And thereupon the said defendant, by his counsel aforesaid, then and there excepted to the whole of the said decision, charge, and instruction of the said judge, and particularly to those parts thereof wherein the said judge decided and held that the said case involved no question of fact for the jury, and wherein the said judge instructed and charged the jury, as matter of law, that the goods in question were entitled, under the act of Congress above referred to, to be admitted free of duty; and wherein the said judge also instructed and charged the said jury, as matter of law, that the plaintiffs were entitled to recover back the moneys exacted by the defendant as duties on the said goods; and the said defendant, by his said counsel, did also then and there except to the aforesaid refusal of the said judge to decide the law of the case, and to instruct and charge the said jury in conformity with the prayer of the counsel of the said defendant, hereinbefore contained.

And the said defendant, by his said counsel, thereupon then and there further excepted to the decision of the said judge, in admitting as evidence against the defendant the deposition of Samuel K. Appleton, and the parts thereof particularly objected to by the said counsel, as hereinbefore mentioned; and in admitting as evidence against the defendant the testimony of James E. Smith, Amory Edwards, George C. Wales, William H. Edwards, and John L. Ripley, hereinbefore particularly objected to by the said counsel; and did also further except to the decision of the said judge in excluding the instructions of the Comptroller of the Treasury, hereinbefore mentioned.

And the jurors of the said jury aforesaid thereupon formed a verdict for the plaintiffs, including interest to the thirteenth day of May, 1847, for the sum of two thousand nine hundred and eight dollars and sixty-nine cents.

And because the said several matters, so offered and given in evidence on the part of the said plaintiffs, and objected to by the said defendant, and so offered on the part of the said defendant, and excluded by the said judge, and the prayers of the said defendant, and the several decisions, instructions, and charge of the said presiding judge, and the said exceptions taken to the same, do not appear by the record of the verdict aforesaid, the defendant has caused the same to be written on this bill of exceptions, to be annexed to such record, and has prayed the said judge to set his hand and seal to the same.

Whereupon the said Samuel Nelson, the said presiding judge before whom the said issue was tried and the said exceptions were taken, has hereto set his hand and seal, this first day of December, in the year of our Lord one thousand eight hundred and forty-eight.

S. NELSON. [L. S.]

Filed 21 December, 1848.

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–	Nichols	Le Roy	1097.
–	Neves	Scott's adm.r	1216.
+	New Haven R.R. Co	Enfield & Suffield	1608.
–	Nicholson	Gaines	1733.
+	Portland City	U. States	1.
+	Philadelphia County	Roach	184.

-	Phalen	Virginia	342.
+	Penrose	Bissell	373.
-	Peters	Wheaton	766.
-	Prentice	Jane	1354.
-	Price Exors of Archer	U. States	1382-91.
-	Perrine	Canal Comp'y	1453.
-	Porter	Benner	1491.
+	Police jury of Concordia	Davis	1557.
+	Peas	Municipality No 1.	1746.
-	Pollard's heirs	Kibbé	2269.
-	Page	Flemming	2418.
+	Roach	Phil.a County	184.
+	Rhode Island	Dorr	254.
+	Rupert	Davis	528.
-	Read	Merrimack River	545.
-	Reddick's heirs	Marsh	829.
-	Reynes	U. States	1134.
+	Ross	Beatty	1714.
+	Rolettes Exors	Louisenan	1720.
-	Reab	Barrow	1771.
-	Roberts	U. States	2314.

—	Ross	Hogan	240.
—	Shaats	U. States	302.
—	Sturget	Lapice	305.
—	Shoddard	Mills	388.
—	Shevens	Gibson	554.
—	St Clair County	Mills	701.
—	Smith	West	896.
—	Sheldon	Sill	1040.
—	Sill	Sheldon	1040.
—	Scott's admr.	Neves	1216.
—	Simpson	Wilson	1398.
—	Strader	Baldwin	1521.
—	State Bank of Ala	Dallon	2346.
+	Sharp	Lyons	2372.
—	Simpson	U. States	2388.
—	Southmayd	U. States	2553.
+	Sane	Jones	439.
—	Saylor	Saylor	455.
—	Supper & Rollins	Wanzer	1116.
—	Sayloe	Merch's Fire Ins. Co	1792.
—	Sufts	Sufts	1810.

Townsend	Jemison	2238.
N. Wales	Portland City	1.
ditto	Carr val	235-47.
ditto	Staab	302.
ditto	Buchanan	570.
ditto	Caldwell	640.
ditto	Boody	686.
ditto	Reynes	1134.
ditto	Price	1382-91.
ditto	Briggs	1710.
ditto	Vose	1776.
ditto	Hill	1778.
ditto	Brown	2287.
ditto	Roberts	2314.
ditto	Marigold	2582.
ditto	Forsyth	2383.
ditto	Simpson	2388.
ditto	Southmayd	2553.
Veazie	Williams	187.
Virginia, State of	Phalen	342.
Vose	Harrison	1776.